UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,340	02/06/2006	Tadahiro Hiramoto	Q87742	9312

65565 7590 08/15/2008

SUGHRUE-265550
2100 PENNSYLVANIA AVE. NW
WASHINGTON, DC 20037-3213

EXAMINER	
GEORGE, KONATA M	
ART UNIT	PAPER NUMBER
1616	
MAIL DATE	DELIVERY MODE
08/15/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,340	HIRAMOTO ET AL.	
	Examiner	Art Unit	
	KONATA M. GEORGE	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-9,11 and 14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-9,11 and 14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1, 5-9, 11 and 14 are pending in this application.

Action Summary

Any rejections of record that are not repeated below are considered withdrawn.

The examiner acknowledges the cancellation of claims 2, 3, 12, 15-8, 21 and 22.

The rejection of claims 1, 5-9, 11 and 14 under 35 U.S.C. 103(a) as being unpatentable over Echigo et al. in view of Yamashita et al. is maintained for the reasons stated in the office action dated. November 28, 2007 and is repeated below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-9, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Echigo et al. (US 6,537,546) in view of Yamashita et al. (US 6,780,403).

Applicants claim a deodorant composition comprising a lignin, a phenolic compound-oxidizing enzyme and a fragrance and/or flavor.

Determination of the scope and content of the prior art
(MPEP §2141.01)

Echigo et al. teach in column 3, lines 9-14, mixing phenolic compounds with enzymes having a polyphenol oxidizing activity. Column 3, lines 18-22 teach examples of the enzyme and lines 53-57 teach the phenolic compound as a lignin and examples thereof. Column 4, lines 16-21 teach the use of the composition as a deodorant or as smell eliminators.

Ascertainment of the difference between the prior art and the claims
(MPEP §2141.02)

Echigo et al. do not teach the addition of a fragrance or a flavor in the composition. It is for this that Yamashita et al. is joined.

Yamashita et al. teach a deodorant composition which comprises a perfume (col. 5, line 66 through col. 6, line 44).

Finding of prima facie obviousness
Rational and Motivation **(MPEP §2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Yamashita et al. with the invention of Echigo et al. Yamashita et al. is relied upon to teach that perfumes are known ingredients to be added to deodorants. Since Echigo et al. teach that the composition can be used as a deodorant, adding a perfume to the composition would have been obvious to one of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed April 23, 2008 have been fully considered but they are not persuasive.

In order to demonstrate the composition is different from the composition of the prior art as stated above, applicant have submitted a Declaration under 37 CFR 1.132.

The declaration submitted on April 23, 2008 has been considered but not found persuasive. The declaration is deficient because it does not show unexpected results. Example 18 in table 4, page 35 and example 23 in table 9, page 41 of applicant specification shows two compositions comprising sodium lignosulfonate as the water-soluble lignin and laccase as the enzyme. Both compositions in the analysis of the exhaled gas demonstrated a score of 1. According to the score chart, a score of 1 denotes no butyric acid odor detected (example 18) and no methylmercaptan odor was detected (example 23). It is unclear to the examiner how the composition of the instant invention and comparative example 2 of the declaration; which comprise the same ingredients; yield such different results. It is therefore the position of the examiner that in addition to no showing unexpected results the declaration does not show a proper side-by-side comparison of the claimed invention with that of the prior art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 5-9, 11 and 14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 20, 23, 34, 41, 44 and 45 of copending Application No. 10/410,520. Although the conflicting claims are not identical, they are not patentably distinct from each other because both copending applications are direct to a deodorant composition comprising a phenolic compound, a phenolic compound-oxidizing enzyme and a fragrance or flavor. The difference between the copending applications is that in application ‘520 the composition is specific to the types of fragrances and flavors used. It is the position of the examiner that since the instant invention is silent with respect to the specific fragrances and flavors then any and all fragrances and flavors can be used, even those listed in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed April 23, 2008 have been fully considered but they are not persuasive.

Applicant would need to file a terminal disclaimer to overcome the double patenting rejection.

Conclusion

Claims 1, 5-9, 11 and 14 remain rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8:00AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Konata M. George
Patent Examiner
Art Unit 1616

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616